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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,129	11/20/2003	Norival R. Figueira	14715SSUS03U	9076
34645 7590 05/20/2008 Anderson Gorecki & Manaras, LLP Attn: John C. Gorecki P.O BOX 553 CARLISLE, MA 01741				
EXAMINER PATEL, CHANDRAHAS B				
ART UNIT		PAPER NUMBER		
2616				
NOTIFICATION DATE		DELIVERY MODE		
05/20/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

john@gorecki.us  
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**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/718,129

**Applicant(s)**

FIGUEIRA ET AL.

**Examiner**

Chandras Patel

**Art Unit**

2616

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 01 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-10 and 15-22.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See continuation sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
 13. ☐ Other: \_\_\_\_\_.

/Ricky Ngo/  
Supervisory Patent Examiner, Art Unit 2616

/Chandras Patel/  
Examiner, Art Unit 2616

Continuation of 7. NOTE: Applicant's arguments filed 5/1/2008 have been fully considered but they are not persuasive. Applicant argues that Schaub does not teach "making a switching decision within the first switch based on the extracted frame contained destination information without performing a lookup in a forwarding table to determine an output port from the first switch over which the frame should be forwarded onto the communication network". However, examiner disagrees. Schaub teaches extracting fields by parsing the fields from packets and based on the fields of a header. Frames are forwarded without doing a table lookup since the output scheduling is done in a round-robin manner either packet by packet or by groups of packets and output port is selected in this manner without doing any table lookup. Applicant argues that Schaub does not teach "each of the fields containing a code to be used by a switch on a network to identify an output port on the switch without performing a table lookup". However, examiner disagrees. Schaub teaches parsing the header of the packet and then determines the output port selection based on the results of mapping. If the category is round-robin as taught by Schaub no lookup is done to identify the output port. Applicant argues that Pearce does not teach "assigning a first value to a first field of the MAC address, the first field, containing a smaller number of bits than a total number of bits of the destination MAC address, the first value containing first output interface information usable by a first switch to identify a first output interface for transmission of frames containing the first value in the first field of the MAC address". However, examiner disagrees. ARP table in Fig. 10 teaches addressing the ports and assigning MAC addresses to ports. This assignment is used to identify the output ports that will be used with a given MAC address.

Applicant argues that protocol data unit data structure stored in a tangible computer readable medium is statutory. However, examiner disagrees. MPEP clearly states data structure per se is non-statutory [MPEP 2106.01]. Further, applicant argues that the data structure contains code to be used a switch on a network to identify an output port on the switch. However, a data structure is being claimed. Data structure can be used to identify a port. However, the data structure itself cannot produce any useful result. A data structure on a computer readable medium cannot cause the functionality to occur until a software or hardware makes use of such data structure. Therefore, a data structure is an abstract idea and is unable to cause any change in the functionality of the device which makes the claim non-statutory.